difference of opinion as to what constitutes a "last resort" that the rule thus stated is little more than a nullity. Undoubtedly there has been a distinct change in the attitude of the courts during the past twenty years. Formerly, conflicts were settled with a casual reference to Blackstone or Kent for an expression of the old rule. Recent cases are few and far between which do not at least contain language to the effect that the intention of the parties will be effectuated if discoverable. A. W. B.

MORTGAGES UPON STOCK IN TRADE CONSISTING OF AUTOMOBILES.—The practice is very common among automobile dealers, upon the receipt of a shipment of automobiles, to procure loans from banking institutions in order to pay the drafts attached to the bills of lading, and to secure the loans by the execution of deeds of trust or chattel mortgages thereon. It has apparently been assumed that such a deed of trust or chattel mortgage, when properly executed and recorded, is valid against the claims of all persons whomsoever. This assumption has undoubtedly been predicated upon the well-established rule that priority of time gives priority of right, as between two equities, where all the statutory requirements of execution and recordation have been complied with. However, according to the generally accepted doctrine, when the mortgagor of a stock in trade is permitted by the mortgagee to remain in possession and to make sales therefrom in the ordinary course of business, applying the proceeds to his own use if he sees fit, the transaction is held to be fraudulent and void as to creditors. See 11 C. J. 573 for collection of authorities.

Although this rule has been repeatedly applied by the Virginia courts, chattel mortgages and deeds of trust placed upon automobiles by dealers were very common in that state. It has obviously been assumed that automobiles, because of their size, value and susceptibility of accurate description, did not come within the purview of this rule. This assumption was discovered to be erroneous when the Supreme Court of Virginia, in the case of *Boyce* v. *Finance and Guaranty Company,* in March, 1920, enunciated the rule that such deeds of trust or chattel mortgages, though properly executed and recorded, are void as to purchasers without notice. The rule would undoubtedly also be applied as to creditors. In that case the court said:

"Property bought for the express purpose of daily indiscriminate sale to the general public, exposed for such sale at the place of business of a licensed dealer, and over which the dealer is permitted to exercise the dominion of owner, cannot be made the subject of a valid chattel mortgage, regardless of its size, value, or capacity for identification. The powers which the dealer is permitted to exercise over the property in such care are inconsistent with a mortgage thereon.

"To require an examination of the records for liens in such cases would break up the business, and indeed be an embargo on legitimate trade. Capital must seek a more substantial security for its protection. Otherwise it were better that the few should suffer than the general public who have been

lured into purchasing from a dealer who has been entrusted with the indicia of ownership. A purchaser in such case is not bound to see the application of the purchase money.

"It is true, as a rule, the seller of personal chattels cannot confer upon a purchaser any better title than he himself has, but if the owner stands by and permits a seller who is a licensed dealer in such goods to hold himself out to the world as the owner, to treat the goods as his own, place them with other similar goods of his own in a public show room, and offer the same indiscriminately with his own to the public, he will be estopped by his conduct from asserting his ownership against a purchaser for value without notice of his title. The constructive notice furnished by a recorded mortgage or deed of trust in such cases is not sufficient. The act of knowingly permitting the goods to be so handled and used by the seller in the ordinary and usual conduct of his business is just as destructive of the rights of the creditor as if such permission had been expressly granted in the mortgage or deed of trust."

The Supreme Court of Washington has accepted a conflicting view of the proper doctrine to be applied to such deeds of trust or chattel mortgages. See *Ephraim* v. *Kelleher*, 4 Wash. 243, 249, and *State Bank* v. *Johnson*, 177 Pac. 340. See also *Levi* v. *Booth*, 58 Md. 305, where the court said that "the bare possession of goods, though he may happen to be a dealer in that class of goods, does not clothe him with power to dispose of the goods as though he were the owner, or as having authority as agent to sell or pledge the goods, to the preclusion of the right of the real owner." But see the later case of *Dias* v. *Chickering*, 64 Md. 348.

According to the instant case, it is not only immaterial that the mortgage did not give a power of sale, but even that the mortgage provided against sale, secretion, conversion, and removal.

The principles enunciated in the principal case certainly seem sound, and they unquestionably respond to the dictates of public policy and commercial convenience.

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ERRATA.—Through an error, for which the author was in no sense responsible, a number of unfortunate mistakes were made in the printing of the notes to the article of Mr. Thomas F. Carroll, appearing in the May number of the REVIEW.

In note 6, the reference to Mr. Harper's speech should be ANNALS, 5TH CONG. I, 141. Note 10, reference to MADISON'S WRITINGS, should be Vol. VI instead of VII. Note 12, the reference should be to ANNALS, 5TH CONG. II, 2142. Note 23, reference to MADISON'S WRITINGS, should be Vol. VI instead of IV. In note 29, citation should be ANNALS, 5TH CONG. III, 2990. In note 30, last reference should be to Mr. Macon's speech. Note 31, last line should read, "ANNALS, 5TH CONG. III, 2989." In note 67 the reference to the writings of Jefferson should be Vol. VIII, p. 218. Note 68 should read, "MADISON'S WRITINGS, VI, 334-335, etc. In note 70, the reference should be to J. S. BASSETT, THE FEDERALIST SYSTEM, instead of to FISKE, CRITICAL PERIOD.